



Detailed, Year-by-Year Accomplishments by The Office of Federal Contract Compliance Programs

The Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP) administers and enforces regulations that prohibit federal contractors and subcontractors from unlawfully discriminating in employment: Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA).

Systemic Discrimination Focus

Since 2001, OFCCP has shifted its focus away from the number of cases closed to the number of systemic discrimination cases (those involving 10 or more employees) developed for enforcement during a fiscal year. OFCCP shifted its focus to: (1) prioritize agency resources to address the worst offenders, those who allow discrimination to be their "standard operating procedure;" (2) achieve maximum leverage of OFCCP resources to protect the greatest number of workers from discrimination; and (3) encourage employers to engage in self-audits, by increasing the tangible consequences of not doing so.

Active Case Management and 'Contracts First' Project

OFCCP introduced a new *modus operandi* called Active Case Management (ACM) in 2003 to better serve American workers and taxpayers. ACM's effects were fully realized in 2005, garnering a record \$45 million in financial remedies for nearly 15,000 victims of unlawful workplace discrimination. Under ACM principles, OFCCP uses centralized scheduling and statistical software to better target its resources towards contractor facilities engaged in systemic discrimination. Generally, if no indicators of potential systemic discrimination are found during the initial screening, the review is closed. In the past, OFCCP required onsite investigations regardless of the presence or absence of these indicators; thus, requiring Compliance Officers to spend a majority of their time traveling to pursue paperwork violations rather than potential or actual discrimination. ACM increased OFCCP's ability to find and remedy unlawful employment discrimination.

Since its inception, OFCCP has relied on contractors' voluntary self-identification to determine OFCCP's jurisdiction. In FY 2005, OFCCP implemented its Contracts First project to produce a contractor selection list that is based on evidence of actual contracts. This initiative inserts information about contract awards into the database used for selection and scheduling of compliance reviews. By 2008, this project reduced by half the number of scheduling letters sent to facilities in error due to a lack of jurisdiction. Additionally, the selection system is enhanced by information that identifies facilities where no compliance reviews have been conducted in recent years.

Eliminating the EO Survey

In 2003, OFCCP hired Abt Associates, an independent research firm, to determine the efficacy of the Equal Opportunity (EO) Survey, an initiative of the previous administration, as a discrimination targeting mechanism. Abt's results have demonstrated conclusively that the EO Survey *fails to find contractors who are actually discriminating*. Abt further found that using the EO Survey as a method of targeting discrimination would direct OFCCP's resources to the wrong places (it has a 93% false positive rate), and would not in any way assist the agency in identifying discrimination during reviews. As a result, OFCCP published in the *Federal Register* a notice of proposed rulemaking in January 2006 and a final rule in September 2006 that eliminated the EO Survey requirement.

Final Rule on who is an Applicant in the Internet Age

In October 2005, OFCCP published its final rule in the *Federal Register* clarifying the recordkeeping requirements for federal contractors concerning who is an "applicant" in the context of the Internet and related technologies. In the mid-to-late 1990s, the advent of the Internet and other electronic technologies created a new, "on-line" job market served by commercial and internal resume databanks, and employer websites. This fundamental shift in the way individuals can apply for jobs and the consequences for employers of receiving potentially thousands of resumes made the existing applicant recordkeeping rules unworkable. The lack of formal guidance to contractors as to the Department's interpretation of the recordkeeping rules for Internet applicants meant employers could potentially have to ask everyone who has a resume on a commercial resume databank service for his or her race and gender whenever the employer searched the databank to find candidates for a job. Under the rule, federal contractors are required to provide race, ethnicity and gender information for those individuals who possess the basic qualifications for the position, express an interest in and are considered by the contractor for a particular position, and do not remove themselves from consideration. The rule's additional recordkeeping requirements ensure that OFCCP will have the ability to assess whether a contractor's selection criteria were discriminatory.

Functional Affirmative Action Program

Since 2001, OFCCP has enacted policy initiatives and directives designed to provide clearer guidance for employers and more enforceable standards for OFCCP. One such directive, on the processing of Functional Affirmative Action Program (FAAP) requests, revised certain of the amendments to E.O. 11246, permitting multi-establishment contractors to develop written affirmative action programs (AAPs) along business or functional lines. This directive, issued in March, 2002, provides two distinct advantages that benefit both the federal contractor community and OFCCP. First, OFCCP uses statistical analyses to evaluate a contractor's written AAP program during a compliance review. A written AAP that covers a small number of employees—which is often the case with traditional AAPs—is less conducive to the statistical analyses OFCCP uses to screen contractor facilities for potential discrimination at the preliminary phase of an

investigation. A FAAP, on the other hand, covers an entire functional unit; this increases the number of employees covered by the affirmative action program. Second, FAAPs reduce paperwork and time-cost burdens for contractors by reducing the number of written affirmative action programs they are required to create and maintain. OFCCP now has more than 133 FAAP agreements with multi-establishment contractors.

Interpretative Standards for Systemic Compensation Discrimination

In June 2006, OFCCP published a notice in the *Federal Register* regarding its new interpretive standards for evaluating compensation practices. This action provided contractors with the first definitive guidance on the subject. A lack of clear standards in the past resulted in conflicts between the rules applied by OFCCP and by the courts. For example, agency officials in the late 1990s used a pay grade (“comparable worth”) theory, which conflicts with the systemic compensation discrimination standards of Title VII of the Civil Rights Act of 1964. Under Title VII case law, employees are similarly situated – and their compensation can be compared – only if they actually perform similar work activities, occupy positions involving similar skills and qualifications, and have similar responsibility levels. OFCCP’s new standards codify its commitment to the Title VII standards with respect to compensation discrimination. At the same time, OFCCP published voluntary guidelines that contractors can use to evaluate their compensation practices. Furthermore, OFCCP established in 2003 an Office of Statistical Analysis, staffed by Ph.D. statisticians in the national office and in several of the regions; this has facilitated the investigation and resolution of compensation discrimination cases.

Separate Facility Exemptions

OFCCP published in September 2002 a policy directive allowing for the granting of a separate facility exemptions/waivers from the requirements of E.O. 11246 and the affirmative action provisions of VEVRAA, when the facility is separate and distinct from activities of the contractor related to the performance of its Government contract. The practical effect of a separate facility exemption is that it allows a federal contractor subject to OFCCP requirements to submit an affirmative action program for its facilities performing federal work, but for facilities not performing federal contract work.

Jobs for Veterans Act Rule

In August 2007, OFCCP published its final rule to implement changes to the nondiscrimination and affirmative action obligations of federal contractors with respect to covered veterans that were required by the 2002 Jobs for Veterans Act (JVA) amendments to the Vietnam Era Veteran’s Readjustment Assistance Act of 1974 (VEVRAA). Among other things, the JVA expanded the categories of veterans protected by the affirmative action provisions of the law, raised the dollar amount of the Government contracts that are subject to the requirements of VEVRAA, and changed the manner in which federal contractors must list employment openings.

Compliance Assistance Efforts

Since 2001, OFCCP has continued to build upon its comprehensive compliance assistance program, conducting about one thousand compliance assistance events in each of the last six years. OFCCP's ACM initiative – to enhance its monitoring of the federal contractor universe – also encourages self-management. Compliance assistance outreach helps employers prevent unlawful discrimination in their workplaces by providing them with the information necessary to effectively monitor their workplaces.

Enhanced Conciliation Capacity Equals Stronger Enforcement

In Fiscal Year 2008, OFCCP enforcement efforts resulted in a **record \$67,518,982** in back pay, annualized salary, and benefits for a **record 24,508 American workers** who had been subjected to unlawful employment discrimination. Of that record enforcement result, 98% was collected in cases of systemic discrimination – those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The \$67.5 million reflects a 170% increase over financial remedies obtained in FY 2001. This marks the fourth consecutive year that OFCCP has posted record enforcement numbers.

| Fiscal Year | Financial Remedies Obtained | Workers Recompensed by OFCCP Agreement | Compliance Evaluations |
|--------------------------|-----------------------------|--|------------------------|
| 2008 | \$67,518,982 | 24,508 | 4,333 |
| 2007 | \$51,680,950 | 22,251 | 4,923 |
| 2006 | \$51,525,235 | 15,273 | 3,975 |
| 2005 | \$45,156,462 | 14,761 | 2,730 |
| 2004 | \$34,479,294 | 9,615 | 6,529 |
| 2003 | \$26,220,356 | 14,361 | 4,698 |
| 2002 | \$23,975,000 | 8,969 | 4,135 |
| 2001 | \$28,975,000 | 9,093 | 4,716 |
| Change From 2001 to 2008 | 133% | 170% | -8% |

A portion of the recoveries came from cases referred to the Office of the Solicitor (SOL) for enforcement litigation. OFCCP also now involves SOL attorneys earlier in its review process and more often in conciliation meetings with contractors. The results of this increased rate of referral for litigation culminated in FY2007 when over \$18 million was obtained for 6,890 workers.

Year-by-Year OFCCP Accomplishments

FY 2001

- ✓ **Strong Enforcement of EEO Requirements:** OFCCP completed 4,716 compliance evaluations, obtaining \$29 million in remedies for workers who were subjected to unlawful discrimination. OFCCP also completed 36 Corporate Management Reviews, which ensure that women and minorities do not face a “Glass Ceiling” barrier to management and executive jobs. OFCCP completed 2,459 compliance checks, to determine whether contractors were keeping employment records as required by OFCCP regulations. OFCCP also completed 36 Mega Project reviews, to ensure that women and minorities have equal access to employment opportunities on multi-million dollar and multi-year major construction projects that are funded by federal or federally-assisted contracts.

FY 2002

- ✓ **Developed and Implemented the Secretary’s Compliance Assistance Initiative:** OFCCP developed a comprehensive compliance assistance strategy and implementation plan to enhance the agency’s effectiveness in helping employers understand OFCCP requirements. OFCCP staff nearly tripled the number of hours spent on compliance assistance programs, including nearly 300 workshops, seminars and town hall meetings and 500 individual contacts with contractors.
- ✓ **Established a Closer Working Relationship With the Office of the Solicitor:** OFCCP and the Office of the Solicitor established a formal framework for a closer working relationship. Under this framework, OFCCP investigators worked closely with attorneys from the Solicitor’s Office during the course of investigations, not just after the case was referred for enforcement litigation. This closer relationship improved the quality of OFCCP investigations and supported an increase in litigation of OFCCP enforcement cases.
- ✓ **Continued Strong Enforcement:** OFCCP completed 4,135 compliance reviews, obtaining nearly \$24 million for approximately 9,000 workers who were subjected to unlawful discrimination in the workplace. OFCCP obtained \$9 million in back pay for 5,198 low-wage earners.

FY 2003

- ✓ **Improved OFCCP Investigations:** OFCCP accomplished record numbers of compliance reviews and Corporate Management Reviews; obtained settlements which provided \$26,220,356 in financial remedies to a record 14,361 workers; and referred 12 systemic discrimination cases to the Solicitor’s Office, a 200% increase

from FY 2002. OFCCP also implemented a formal framework for close consultation with Solicitor's Office attorneys during investigations and for approval of conciliation agreements and hired a Director of Statistical Analysis to improve the competence of OFCCP's statistical analysis.

- ✓ **Aggressively implemented the President's Management Agenda with respect to Human Capital:** OFCCP developed and implemented a Management and Leadership Development program for OFCCP personnel who showed management potential; reformed the performance management system; provided substantial financial rewards for top performers; used performance management processes to motivate marginal performers and to eliminate poor performers; and aligned managerial strength to agency needs through personnel reassignments.

FY 2004

- ✓ **Continued to Increase OFCCP's Competence:** OFCCP increased agency competence in conducting systemic discrimination investigations by hiring expert statisticians to support each regional office; purchased statistical software and developed software applications to improve the statistical competence of compliance officers; hired experts in other technical areas; and demonstrated the success of competent investigations through bigger settlements and enforcement litigation.
- ✓ **Expanded Compliance Assistance Tools:** OFCCP continued to implement the Secretary's Compliance Assistance initiative and finalized work on compliance assistance tools and materials. For example, OFCCP developed the eLaws Advisors on OFCCP jurisdiction, a sample affirmative action plan, a small business handbook, and a recruiting sources guide.

FY 2005

- ✓ **Evaluated the Efficacy of the Equal Opportunity Survey:** OFCCP hired an outside research firm to determine the efficacy of the EO Survey as a discrimination targeting mechanism.
- ✓ **Performed an Analysis of Active Case Management:** OFCCP's Division of Program Operations performed an audit of each region to assess their performance under Active Case Management.
- ✓ **Implemented the Internet Applicant Rule:** In October 2005, OFCCP published a final rule in the *Federal Register* that clarified recordkeeping provisions for federal contractors concerning who is an "applicant" in the context of the Internet and related technologies.

- ✓ **Record Financial Recoveries:** In Fiscal Year 2005, OFCCP recovered a then-record \$45,156,462 for 14,761 American workers who had been subjected to unlawful employment discrimination. Of that record recovery, 97% was collected in cases of systemic discrimination – those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The \$45 million reflects a 56% increase in recoveries over FY 2001.

FY 2006

- ✓ **Eliminated the EO Survey:** The results from the review by an independent research firm to determine the efficacy of the Equal Opportunity (EO) Survey as a discrimination targeting mechanism demonstrated conclusively that the EO Survey *failed to find contractors who are actually discriminating*. It further found that using the EO Survey as a method of targeting discrimination directed OFCCP's resources to the wrong places (it has a 93% false positive rate). Therefore, in 2006 OFCCP published in the *Federal Register* both a notice of proposed rulemaking and then a final rule to eliminate the EO Survey requirement.
- ✓ **Interpretative Standards for Systemic Compensation Discrimination:** OFCCP published in the *Federal Register* new interpretive standards for evaluating compensation practices, providing contractors with the first definitive guidance on the subject. The standards provide the agency with a stronger basis for pursuing investigations of possible systemic compensation discrimination because of their transparency and their consistency with court rulings on pay discrimination law. At the same time, OFCCP published voluntary guidelines that contractors can use to evaluate their compensation practices.
- ✓ **Record Recoveries for Workers Subject to Discrimination:** In FY 2006, OFCCP recovered a record \$51,525,235 for a record 15,273 American workers who had been subjected to unlawful employment discrimination. Of that record recovery, 88% was collected in cases of systemic discrimination – those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The \$51.5 million reflects a 14% increase over recoveries in FY 2005 and a 78% increase over FY 2001.
- ✓ **"Contracts First" Implemented:** OFCCP began developing a comprehensive database of federal contractors, focusing on those who had not been reviewed by the agency during the last several years because they had not self-identified as federal contractors. Using this database, OFCCP included these newly-identified federal contractors in its compliance evaluation scheduling process.

FY 2007

- ✓ **Yet Another Year of Record Financial Remedies for a Record Number of American Workers:** In FY 2007, OFCCP enforcement efforts resulted in a record \$51,680,950 in

back pay and annualized salary and benefits for a record 22,251 American workers who had been subjected to unlawful employment discrimination. Of that record enforcement result, 98% was collected in cases of systemic discrimination – those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The nearly \$52 million reflects a 78% increase over financial remedies obtained in FY 2001. This marks the third consecutive year that OFCCP has posted record enforcement numbers.

- ✓ **Jobs for Veterans Act Final Rule:** In August 2007, OFCCP published its final rule to implement changes to the nondiscrimination and affirmative action obligations of federal contractors with respect to covered veterans that were required by the 2002 Jobs for Veterans Act (JVA) amendments to the Vietnam Era Veteran's Readjustment Assistance Act of 1974 (VEVRAA).
- ✓ **Implementation of Contracts First:** OFCCP continued developing and began implementing a comprehensive database of federal contractors, focusing on those who had not been reviewed by the agency during the last several years because they had not self-identified as federal contractors. Using this database, OFCCP included these newly-identified federal contractors in its compliance evaluation scheduling process.
- ✓ **Compensation:** OFCCP followed up its 2006 *Federal Register* notice regarding interpretive standards for evaluating compensation practices by issuing an enforcement directive and undertaking extensive training of its compliance officers in the investigation of compensation discrimination cases.
- ✓ **"Glass Ceiling" Audits:** OFCCP conducted 31 Corporate Management Compliance Evaluations (CMCEs), also known as "Glass Ceiling" audits.

FY 2008

- ✓ **Continued Implementation of Contracts First:** OFCCP continued to develop a database of those federal contractors which had not been reviewed by the agency in several years, if ever. OFCCP also continued to include newly-identified federal contractors in its compliance evaluation scheduling process; this assists the agency in ensuring that all federal contractors are complying with their equal employment opportunity obligations.
- ✓ **Continue to Fine-Tune Active Case Management:** In the previous fiscal year, OFCCP's Division of Program Operations conducted an audit of impediments to timely case closures by the regions. In FY 2008, OFCCP used the findings to assess and fine tune its performance under the Active Case Management system. Additionally, this fine tuning led to more effectively monitoring contractors' compliance with conciliation agreements that were signed in 2008 and prior years. The number of systemic cases increased from 50 in 2007 to 78 in 2008. This 56%

percent increase is the benefit from training, new statistical tools, and overall better management of cases.

- ✓ **EEO-1 Guidance:** During FY 2008, OFCCP published a directive as guidance to address the changes to the EEO-1 Form on which employers collect and report data about the racial, ethnic, and gender composition of their workforces. The most significant issue addressed by the directive is the new “two or more races” category. OFCCP also assisted contractors in FY 2008 with the transition to the new form.